

AMENDED IN ASSEMBLY SEPTEMBER 12, 2009

AMENDED IN ASSEMBLY JUNE 24, 2009

SENATE BILL

No. 62

Introduced by ~~Committee on Budget and Fiscal Review~~ *Senator Simitian*

January 20, 2009

An act to amend and supplement the Budget Act of 2009 (Chapter 1 of the 2009–10 Third Extraordinary Session) by amending Items 0250-001-0001, 0250-001-0159, 0250-001-0932, 0250-001-3037, 0250-001-3066, 0250-012-0001, 0250-101-0001, 0250-101-0932, 0250-102-0556, 0250-111-0001, 0250-112-0001, 0250-301-0660, 0250-301-3037, 0502-001-0001, 0502-001-9740, 0510-001-0001, 0510-001-9740, 0520-001-0001, 0520-001-0044, 0530-001-9732, 0540-001-0140, 0540-001-6031, 0540-001-6051, 0540-490, 0555-001-0028, 0555-001-0044, 0555-001-0235, 0559-001-0001, 0559-001-3078, 0650-001-0001, 0650-001-0890, 0690-001-0001, 0690-001-0890, 0690-001-6061, 0690-101-0890, 0690-102-0214, 0690-102-0890, 0820-001-0001, 0820-001-0378, 0820-001-0890, 0820-001-3086, 0840-001-0001, 0840-001-0061, 0840-001-0062, 0840-001-0330, 0840-001-0890, 0840-001-0903, 0840-001-0970, 0840-001-0988, 0840-001-6057, 0840-001-9740, 0840-011-0494, 0840-011-0797, 0840-011-0988, 0855-111-0367, 0860-001-0001, 0860-001-0022, 0860-001-0061, 0860-001-0623, 0860-001-3015, 0950-001-0001, 0950-001-9740, 0968-001-0457, 1111-002-0582, 1730-001-0001, 1730-001-0044, 1730-001-0064, 1730-001-0242, 1760-001-0666, 1760-101-0022, 1870-001-0001, 1870-001-0890, 1870-101-0890, 1880-001-0001, 1900-015-0815, 1900-015-0820, 1900-015-0830, 1900-015-0833, 1900-015-0884, 2240-001-0648, 2240-101-0001, 2240-101-0890, 2320-001-0317, 2660-001-0042, 2660-001-0890, 2660-001-6801, 2660-002-3007, 2660-002-3008,

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~~9840-001-0001 of, by adding Items 0250-001-3138, 0250-111-0159,~~
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LEGISLATIVE COUNSEL'S DIGEST

SB 62, as amended, ~~Committee on Budget and Fiscal Review~~ *Simitian. Budget Act of 2009: revisions. Renewable energy resources.*

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. The Public Utilities Act imposes various duties and responsibilities on the PUC with respect to the purchase of electricity and requires the PUC to review and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program (RPS program). The RPS program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year. The RPS program requires the PUC to implement annual procurement targets for each retail seller to increase its total procurement of electricity generated by eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales of electricity are procured from eligible renewable energy resources no later than December 31, 2010. Existing law requires the PUC to make a determination of the existing market cost for electricity, which PUC decisions call the market price referent, and to limit an electrical corporation's obligation to procure electricity from eligible renewable energy resources, that exceeds the market price referent, by a specified amount.

This bill would instead require the PUC to require that a retail seller procure the following percentages of electricity from eligible renewable energy resources by the following dates: (A) Until December 31, 2012, the same percentage as actually achieved by the retail seller during 2009; (B) 20% by December 31, 2013; (C) 25% by December 31, 2016; and (D) 33% by December 31, 2020. The bill would authorize the PUC to permit a retail seller to delay compliance with (B) or (C) procurement levels when specified circumstances are present, but would not authorize the PUC to permit a retail seller to delay compliance with the (D) procurement level. The bill would delete the existing market price referent provisions and instead require the PUC to establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of, and reflecting, certain matters. The bill would require the PUC to establish a limitation on the annual expenditures made above the market price, by an electrical corporation,

in order to achieve the procurement levels established by the PUC. The bill would require the PUC to permit an electrical corporation to limit its procurement of electricity from eligible renewable energy resources to that quantity that can be procured at or below the market prices established by the PUC, up to the limitation. The bill would delete an existing requirement that the PUC adopt flexible rules for compliance for retail sellers.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the PUC is a crime.

Because the provisions of this bill are within the act and require action by the PUC to implement its requirements, a violation of these provisions would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The Budget Act of 2009 (Chapter 1 of the 2009–10 Third Extraordinary Session) made appropriations for the support of state government for the 2009–10 fiscal year.~~

~~This bill would make revisions in those appropriations for the 2009–10 fiscal year. The bill would make specified reductions in certain appropriations.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes-no~~. Fiscal committee: yes. State-mandated local program: ~~no-yes~~.

The people of the State of California do enact as follows:

1 SECTION 1. Section 399.15 of the Public Utilities Code is
2 repealed.

3 399.15. (a) In order to fulfill unmet long-term resource needs,
4 ~~the commission shall establish a renewables portfolio standard~~
5 ~~requiring all electrical corporations to procure a minimum quantity~~
6 ~~of electricity generated by eligible renewable energy resources as~~
7 ~~a specified percentage of total kilowatthours sold to their retail~~
8 ~~end-use customers each calendar year, subject to limits on the total~~

1 amount of costs expended above the market prices determined in
2 subdivision (c), to achieve the targets established under this article.

3 (b) ~~The commission shall implement annual procurement targets~~
4 ~~for each retail seller as follows:~~

5 (1) ~~Each retail seller shall, pursuant to subdivision (a), increase~~
6 ~~its total procurement of eligible renewable energy resources by at~~
7 ~~least an additional 1 percent of retail sales per year so that 20~~
8 ~~percent of its retail sales are procured from eligible renewable~~
9 ~~energy resources no later than December 31, 2010. A retail seller~~
10 ~~with 20 percent of retail sales procured from eligible renewable~~
11 ~~energy resources in any year shall not be required to increase its~~
12 ~~procurement of renewable energy resources in the following year.~~

13 (2) ~~For purposes of setting annual procurement targets, the~~
14 ~~commission shall establish an initial baseline for each retail seller~~
15 ~~based on the actual percentage of retail sales procured from eligible~~
16 ~~renewable energy resources in 2001, and to the extent applicable,~~
17 ~~adjusted going forward pursuant to Section 399.12.~~

18 (3) ~~Only for purposes of establishing these targets, the~~
19 ~~commission shall include all electricity sold to retail customers by~~
20 ~~the Department of Water Resources pursuant to Section 80100 of~~
21 ~~the Water Code in the calculation of retail sales by an electrical~~
22 ~~corporation.~~

23 (4) ~~In the event that a retail seller fails to procure sufficient~~
24 ~~eligible renewable energy resources in a given year to meet any~~
25 ~~annual target established pursuant to this subdivision, the retail~~
26 ~~seller shall procure additional eligible renewable energy resources~~
27 ~~in subsequent years to compensate for the shortfall, subject to the~~
28 ~~limitation on costs for electrical corporations established pursuant~~
29 ~~to subdivision (d).~~

30 (e) ~~The commission shall establish a methodology to determine~~
31 ~~the market price of electricity for terms corresponding to the length~~
32 ~~of contracts with eligible renewable energy resources, in~~
33 ~~consideration of the following:~~

34 (1) ~~The long-term market price of electricity for fixed price~~
35 ~~contracts, determined pursuant to an electrical corporation's general~~
36 ~~procurement activities as authorized by the commission.~~

37 (2) ~~The long-term ownership, operating, and fixed-price fuel~~
38 ~~costs associated with fixed-price electricity from new generating~~
39 ~~facilities.~~

1 ~~(3) The value of different products including baseload, peaking,~~
2 ~~and as-available electricity.~~

3 ~~(d) The commission shall establish, for each electrical~~
4 ~~corporation, a limitation on the total costs expended above the~~
5 ~~market prices determined in subdivision (c) for the procurement~~
6 ~~of eligible renewable energy resources to achieve the annual~~
7 ~~procurement targets established under this article.~~

8 ~~(1) The cost limitation shall be equal to the amount of funds~~
9 ~~transferred to each electrical corporation by the Energy~~
10 ~~Commission pursuant to subdivision (b) of Section 25743 of the~~
11 ~~Public Resources Code and the 51.5 percent of the funds which~~
12 ~~would have been collected through January 1, 2012, from the~~
13 ~~customers of the electrical corporation based on the renewable~~
14 ~~energy public goods charge in effect as of January 1, 2007.~~

15 ~~(2) The above-market costs of a contract selected by an electrical~~
16 ~~corporation may be counted toward the cost limitation if all of the~~
17 ~~following conditions are satisfied:~~

18 ~~(A) The contract has been approved by the commission and was~~
19 ~~selected through a competitive solicitation pursuant to the~~
20 ~~requirements of subdivision (d) of Section 399.14.~~

21 ~~(B) The contract covers a duration of no less than 10 years.~~

22 ~~(C) The contracted project is a new or repowered facility~~
23 ~~commencing commercial operations on or after January 1, 2005.~~

24 ~~(D) No purchases of renewable energy credits may be eligible~~
25 ~~for consideration as an above-market cost.~~

26 ~~(E) The above-market costs of a contract do not include any~~
27 ~~indirect expenses including imbalance energy charges, sale of~~
28 ~~excess energy, decreased generation from existing resources, or~~
29 ~~transmission upgrades.~~

30 ~~(3) If the cost limitation for an electrical corporation is~~
31 ~~insufficient to support the total costs expended above the market~~
32 ~~prices determined in subdivision (c) for the procurement of eligible~~
33 ~~renewable energy resources satisfying the conditions of paragraph~~
34 ~~(2), the commission shall allow the electrical corporation to limit~~
35 ~~its procurement to the quantity of eligible renewable energy~~
36 ~~resources that can be procured at or below the market prices~~
37 ~~established in subdivision (c).~~

38 ~~(4) Nothing in this section prevents an electrical corporation~~
39 ~~from voluntarily proposing to procure eligible renewable energy~~
40 ~~resources at above-market prices that are not counted toward the~~

1 cost limitation. Any voluntary procurement involving above-market
2 costs shall be subject to commission approval prior to the expense
3 being recovered in rates.

4 (e) ~~The establishment of a renewables portfolio standard shall~~
5 ~~not constitute implementation by the commission of the federal~~
6 ~~Public Utility Regulatory Policies Act of 1978 (Public Law~~
7 ~~95-617).~~

8 (f) ~~The commission shall consult with the Energy Commission~~
9 ~~in calculating market prices under subdivision (e) and establishing~~
10 ~~other renewables portfolio standard policies.~~

11 SEC. 2. *Section 399.15 is added to the Public Utilities Code,*
12 *to read:*

13 399.15. (a) *In order to fulfill unmet long-term resource needs,*
14 *the commission shall establish a renewables portfolio standard*
15 *requiring all retail sellers to procure a minimum quantity of*
16 *electricity generated by eligible renewable energy resources as a*
17 *specified percentage of total kilowatthours sold to their retail*
18 *end-use customers each compliance period to achieve the targets*
19 *established under this article.*

20 (b) *The commission shall implement renewables portfolio*
21 *standard procurement requirements only as follows:*

22 (1) *Each retail seller shall procure the following minimum*
23 *percentages of eligible renewable energy resources in the following*
24 *years, and continue to procure at least those percentages in*
25 *subsequent years:*

26 (A) *Until December 31, 2012, the same percentage as actually*
27 *achieved by the retail seller during 2009.*

28 (B) *Twenty percent by December 31, 2013.*

29 (C) *Twenty-five percent by December 31, 2016.*

30 (D) *Thirty-three percent by December 31, 2020.*

31 (2) *A retail seller with 33 percent of its retail sales of electricity*
32 *procured from eligible renewable energy resources in any year*
33 *shall not be required to increase its procurement of renewable*
34 *energy resources, except to the extent required to maintain a 33*
35 *percent renewables portfolio standard. A retail seller may*
36 *voluntarily increase its procurement of eligible renewable energy*
37 *resources beyond the renewables portfolio standard procurement*
38 *requirements.*

39 (3) *Only for purposes of establishing the renewables portfolio*
40 *standard procurement requirements of paragraph (1), the*

1 *commission shall include all electricity sold to retail customers*
2 *by the Department of Water Resources pursuant to Section 80100*
3 *of the Water Code in the calculation of retail sales by an electrical*
4 *corporation.*

5 *(4) The commission may only allow a retail seller for a*
6 *maximum of two years per request to delay compliance with a*
7 *renewables portfolio standard procurement requirement*
8 *established pursuant to subparagraph (B) or (C) of paragraph*
9 *(1), if it finds that the retail seller has demonstrated that either of*
10 *the following conditions will prevent timely compliance:*

11 *(A) There is inadequate transmission capacity to allow for*
12 *sufficient electricity to be delivered from proposed eligible*
13 *renewable energy resource projects using the current operational*
14 *protocols of the Independent System Operator (ISO). The*
15 *commission shall consult with the ISO in making its findings*
16 *relative to the existence of this condition. In making its findings*
17 *relative to the existence of this condition with respect to a retail*
18 *seller that owns transmission lines, the commission shall consider*
19 *both of the following:*

20 *(i) Whether the retail seller has undertaken all reasonable*
21 *measures to develop and construct new transmission lines or*
22 *upgrades to existing lines in a timely fashion.*

23 *(ii) Whether the retail seller has taken all reasonable*
24 *operational measures, as verified by the ISO, to maximize*
25 *deliveries of electricity from eligible renewable energy resources*
26 *in advance of transmission availability.*

27 *(B) Unanticipated permitting, interconnection, or other delays*
28 *for procured eligible renewable energy resource projects, or there*
29 *is an insufficient supply of delivered electricity from eligible*
30 *renewable energy resources available to the retail seller. In making*
31 *this finding, the commission shall consider whether the retail seller*
32 *has prudently managed portfolio risks, relied on sufficient viable*
33 *projects, sought to develop its own eligible renewable energy*
34 *resources, and procured an appropriate minimum margin of*
35 *procurement above the minimum procurement level necessary to*
36 *comply with the renewables portfolio standard to compensate for*
37 *foreseeable delays or insufficient supply.*

38 *(5) Prior to granting a delay pursuant to paragraph (4), the*
39 *commission shall require a retail seller to demonstrate that it has*
40 *presented evidence that it has made material progress in reducing*

1 *its compliance deficit and has taken all reasonable measures*
2 *consistent with this article to procure cost-effective distributed*
3 *generation and renewable energy credits consistent with the*
4 *restrictions in paragraph (6) of subdivision (a) of Section 399.21.*

5 *(6) The commission may not approve any request to delay a*
6 *compliance obligation for which it has already granted a delay*
7 *unless a retail seller presents evidence that it has made material*
8 *progress in reducing its compliance deficiency and has identified*
9 *and taken all reasonable actions under its control to pursue*
10 *additional options to comply with the delayed interim procurement*
11 *obligation and remove impediments that are related to its delay.*

12 *(7) The commission may not authorize any delay in achieving*
13 *the 33 percent by December 31, 2020, renewables portfolio*
14 *standard procurement requirement of subparagraph (D) of*
15 *paragraph (1).*

16 *(8) If a retail seller fails to procure sufficient eligible renewable*
17 *energy resources to comply with a renewables portfolio standard*
18 *procurement requirement and fails to obtain an order from the*
19 *commission authorizing a compliance delay pursuant to paragraph*
20 *(4), the commission shall exercise its authority pursuant to Section*
21 *2113.*

22 *(c) The commission shall establish a methodology to determine*
23 *the market price of electricity for terms corresponding to the length*
24 *of contracts with eligible renewable energy resources, in*
25 *consideration of the long-term ownership, operating, and*
26 *fixed-price fuel costs associated with fixed-price electricity from*
27 *new generating facilities. The methodology shall reflect all of the*
28 *following:*

29 *(1) The value of different products including baseload, peaking,*
30 *and as-available electricity.*

31 *(2) All current and anticipated environmental compliance costs,*
32 *including mitigation of emissions of greenhouse gases and air*
33 *pollution offsets associated with the operation of new generating*
34 *facilities.*

35 *(d) (1) The commission shall establish a limitation for each*
36 *electrical corporation on the expenditures above the market costs*
37 *determined in subdivision (c) for the procurement of all eligible*
38 *renewable energy resources that are used to comply with the*
39 *electrical corporation's renewables portfolio standard. The cost*
40 *limitation shall equal 6 percent of the total bundled electric*

1 revenues recorded by the electrical corporation in 2008 multiplied
2 by the number of years remaining until 2020. Total bundled electric
3 revenues shall include revenues collected by the electrical
4 corporation on behalf of the Department of Water Resources for
5 procurement activities conducted pursuant to Division 27
6 (commencing with Section 80000) of the Water Code.

7 (2) The calculation of the above-market costs shall include all
8 procurement of eligible renewable energy resources that are used
9 to comply with the electrical corporation's renewables portfolio
10 standard that are submitted for approval to the commission after
11 January 1, 2010.

12 (3) The above-market costs of procurement do not include any
13 indirect expenses, including imbalance energy charges, sale of
14 excess energy, decreased generation from existing resources, or
15 transmission upgrades.

16 (4) Calculations of the above-market costs shall include, as a
17 reduction to the total above-market costs, procurement from
18 eligible renewable energy resources that are used to meet the
19 renewables portfolio standard procurement requirements
20 established pursuant to paragraph (1) of subdivision (b) that are
21 below the market prices determined in subdivision (c) for each
22 year.

23 (5) In calculating the limit on above-market costs established
24 in paragraph (1), the commission shall account for the potential
25 that some procured resources may be delayed or canceled.

26 (e) If the cost limitation for an electrical corporation is
27 insufficient to support the projected net above-market costs
28 identified in subdivision (d), the commission shall allow the
29 electrical corporation to refrain from entering into new contracts
30 or to construct facilities for that future year beyond the quantity
31 of eligible renewable energy resources that can be procured at or
32 below the market prices established in subdivision (c).

33 (f) Notwithstanding subdivision (e), if an electrical corporation's
34 net annual above-market costs for a future year exceed the
35 electrical corporation's cost limitation, the electrical corporation
36 may voluntarily propose to procure eligible renewable energy
37 resources at above-market prices. Any voluntary procurement
38 under this paragraph shall be subject to commission approval
39 prior to the expense being recovered in rates.

1 (g) (1) *The commission shall monitor the status of the cost*
2 *limitation for each electrical corporation in order to ensure*
3 *compliance with this article.*

4 (2) *If the commission determines that an electrical corporation*
5 *may exceed its cost limitation prior to achieving the renewables*
6 *portfolio standard procurement requirements, the commission*
7 *shall do all of the following within 60 days of making that*
8 *determination:*

9 (A) *Investigate and identify the reasons why the electrical*
10 *corporation may exceed its annual cost limitation.*

11 (B) *Identify those actions that can be taken to ensure that the*
12 *electrical corporation continues to comply with its renewables*
13 *portfolio standard procurement requirements.*

14 (C) *Notify the appropriate policy and fiscal committees of the*
15 *Legislature that the electrical corporation may exceed its cost*
16 *limitation, the reasons why the electrical corporation may exceed*
17 *its cost limitation, and those actions that may be taken by the*
18 *electrical corporation to comply with the renewables portfolio*
19 *standard procurement requirements.*

20 (3) *The commission shall examine mechanisms for mitigating*
21 *the potential impact of low fossil fuel prices on the cost limitation*
22 *of each electrical corporation and make recommendations to the*
23 *Legislature on any changes in law it identifies to mitigate those*
24 *impacts.*

25 (h) *The commission shall examine and adopt mechanisms to*
26 *limit the potential influence of the market prices established in*
27 *subdivision (c) on seller pricing and buyer contract selection.*

28 (i) *The establishment of a renewables portfolio standard shall*
29 *not constitute implementation by the commission of the federal*
30 *Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).*

31 (j) *The commission shall consult with the Energy Commission*
32 *in establishing renewables portfolio standard policies.*

33 SEC. 3. *No reimbursement is required by this act pursuant to*
34 *Section 6 of Article XIII B of the California Constitution because*
35 *the only costs that may be incurred by a local agency or school*
36 *district will be incurred because this act creates a new crime or*
37 *infraction, eliminates a crime or infraction, or changes the penalty*
38 *for a crime or infraction, within the meaning of Section 17556 of*
39 *the Government Code, or changes the definition of a crime within*

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

3 *SEC. 4. This bill shall only become operative if this bill,*
4 *Assembly Bill 64, and Senate Bill 14 are all enacted and become*
5 *effective on or before January 1, 2010.*

6
7
8 **All matter omitted in this version of the bill**
9 **appears in the bill as amended in Assembly,**
10 **June 24, 2009 (JR11)**
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